

D. C. requests review of Administrative Law Judge La Jeunesse's dismissal of Mr. C.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board of the Utah Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. C.'s first application, filed on September 29, 2003, claimed workers' compensation benefits from Whitakers Construction for a back injury. Mr. C. attributed his injury to a work accident that had occurred on May 6, 1999. Mr. C. filed a second application on April 28, 2004, again seeking benefits from Whitakers Construction for his back injury, but this time attributing the injury to a work accident that had occurred on August 25, 2003.

Judge La Jeunesse held an evidentiary hearing in this matter on September 23, 2004, and then, in a decision issued February 24, 2005, denied Mr. C.'s claim. Specifically, Judge La Jeunesse concluded that Mr. C.'s back injury was not medically caused by the accident on May 6, 1999, and that Mr. C. had failed to satisfy the "notice of injury" requirement of § 34A-2-407 with respect to his accident of August 25, 2003.

The sole issue raised by Mr. C.'s motion for review is whether he provided notice of his injury within the time period established by § 34A-2-407.

FINDINGS OF FACT

The following facts are determinative of Mr. C.'s motion for review.

Mr. C. was working for Whitakers as a pipe layer on August 25, 2003, when he allegedly injured his back. He filed an application for hearing on September 29, 2003, in which he sought workers' compensation benefits for his back injury. However, the application attributed the back injury to an accident that had occurred at Whitakers in 1999, rather than the more recent accident on August 25, 2003. A copy of Mr. C.'s application was mailed to Whitakers on October 2, 2003, and Whitakers filed a response on October 9, 2003.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers' Compensation Act requires employers to provide disability compensation

and medical benefits to employees injured in work-related accidents. (See § 34A-2-401 of the Act.) However, an injured worker's right to these benefits is subject to the notice requirements of § 34A-2-407 of the Act. Because Mr. C. is seeking benefits for an injury that occurred on August 25, 2003, his claim is subject to § 34A-2-407 as amended effective May 5, 2003. The provisions of § 34A-2-407 that are material to Mr. C.'s application are set out below:

(2) (a) Any employee sustaining an injury arising out of and in the course of employment shall provide notification to the employee's employer promptly of the injury. . . .

(3) (a) An employee is barred for any claim of benefits arising from an injury if the employee fails to notify within the time period described in Subsection (3)(b):

- (i) the employee's employer in accordance with Subsection (2); or
- (ii) the division.

(b) The notice required by Subsection (3)(a) shall be made within:

- (i) 180 days of the day on which the injury occurs;

In applying these statutory provisions, the Appeals Board must give effect to the Act's plain language. Furthermore, the Act must be liberally construed in favor of coverage and compensation. In this case, both of these principles lead to the conclusion that Mr. C. has satisfied the Act's notice requirement.

Section 34A-2-407(3) bars any claim for benefits if notice of injury is not given within 180 days after the date of injury. In other words, § 34A-2-407(3) requires notice of **injury**, rather than notice of **accident**. In this case, Whitakers received notice of Mr. C.'s back injury when it received his application for hearing on approximately October 2, 2003, well within the 180-day limit of § 34A-2-407(3). Although Mr. C. correctly identified his injury, he mistakenly attributed the injury to the wrong work accident. Nevertheless, Mr. C.'s application was sufficient to provide Whitakers with timely notice of Mr. C.'s **injury**, which is all that is required by § 34A-2-407(3).

In light of the foregoing, the Appeals Board concludes that Mr. C.'s claim is not barred by § 34A-2-407(3) and should be adjudicated on its merits.

ORDER

The Appeals Board grants Mr. C.'s motion for review, sets aside Judge La Jeunesse's decision, and remands Mr. C.'s claim to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 20th day of January, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch